

Supervision of Offenders: An Untapped Frontier for Policy Reform

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We are six years short of the 100 year anniversary of the 1914 Harrison Act. This infamous legislation laid the foundation for the current policies addressing the ongoing problems of drug use. These policies have promulgated criminalizing drug use behavior, emphasizing incarceration as the preferred policy for drug offenders, using mandatory minimums as a mechanism to ensure incarceration time, and distancing health care providers from working with addicts. The cumulative effect of nearly 100 year old policies has been to create a \$65 billion prison system (not including the costs of probation and parole, jails, and courts) and to recycle offenders through the system with recidivism rates that range (nationwide) around 70 percent. Recent strides in reentry have started to craft different policies but they depend on a community correction system that is structured to ensure the safety of the public. And, these policies do not support front-end efforts to introduce well-structured community punishments for lower risk offenders and more intensive rehabilitation based policies for medium and high risk offenders. The following will outline some recommendations that are designed to strengthen community corrections and to advance policies to reduce the recycling of offenders through the criminal justice system.

Background

- Over 8 million adults and 650,000 youth are under correctional control in the U.S. Over 80 percent--over 6 million adults and 500,000 youth--are supervised by adult or juvenile justice correctional agencies in the U.S.
- Anywhere between 35 to 80 percent of prison intakes are the result of failures on community supervision. In Virginia, nearly 40 percent of prison intakes are failure from probation and parole. Inadequate policies and practices drive the criminal justice system.
- Offenders in the community have substance abuse and mental health disorders that are upwards of four times greater than the general public, and yet many of these disorders go untreated with correctional and substance abuse-mental health agencies only capable of treating less than 10 percent of the offender population in need (Taxman, Perdoni, & Harrison, 2007).
- The available substance abuse programs are not sufficient for the severity of the substance abuse behaviors of the offender. The majority of substance abuse programs are alcohol and drug education or outpatient services (under 4 hours of care a week). Most offenders have more serious and chronic substance abuse disorders which would be more clinically appropriate for intensive outpatient services. The typical criminal justice offender needs intensive treatment services that involve multiple levels including treatment readiness, intensive treatment, education/vocational training to supplement treatment, and maintenance. The emphasis should be on a continuing care model of recovery rather than a single event style of treatment.
- Somatic health disorders (e.g. asthma, diabetes, cardiac, etc.) and infectious diseases (e.g. sexually transmitted diseases, etc.) among the offender population are anywhere from 100 to

more than 200 percent more likely to occur than in the general population. Failure to address health care results in risky behaviors that are threats to the community. For example, in a recent study, sexually transmitted diseases and pregnancy increased in communities with disproportionately large numbers of offenders returned to the community after prison (Thomas & Torrone, 2006).

- Community corrections are hampered by excessive caseloads (average of 1:132) which make it impossible to adequately supervise offenders. Nearly half of the probationers are convicted of misdemeanor offenses (Glaze & Bonzcar, 2007).
- Insufficient resources are provided at the judiciary to guide sentencing recommendations. Pretrial sentence investigations are generally restricted to felony offenders, and often do not use evidence-based practice tools to provide the court with adequate sentence recommendations.
- No federal initiative has focused on strengthening community supervision (including pretrial investigations and recommendations) to serve the dual purpose of crime control and crime reduction. Federal initiatives have focused on specific programs like drug courts or residential substance abuse treatment programs. For example, the Drug Court program spearheaded the expansion of drug treatment courts and other specialized courts but these expansions have been limited to the system serving less than 3 percent of the offenders with substance use disorders.
- Not paying attention to community supervision prevents public policy in corrections from advancing. Failures in community supervision will continue to erode confidence in policies that allow offenders to remain in the community while repaying society for their crimes.

Building an Infrastructure with Science

Over the last 30 years, research in correctional programming has come to a consensus about how to alter the behavior of offenders (Taxman, Shepardson & Byrne, 2004; National Institute of Corrections, 2004; Mackenzie, 2000; National Research Council, 2007, National Institute on Drug Abuse, 2006) This research is drawn from rigorous scientific studies on intensive supervision, boot camps, residential in-prison/jail treatment, drug courts, seamless systems of care, substance abuse treatment programs, and cognitive behavioral programs. We will apply these concepts to community supervision to create a behavioral management model where the offender is held accountable; the role of probation is to encourage successful completion. This requires changing current policy and procedures as well as equipping probation with new tools to be effective.

Overall, the evidence-based practices literature identifies four system features that will improve offender outcomes. These are:

1. Use a standardized risk tool to identify public safety risk. This tool is like an actuarial tool that identifies offenders that are higher risk for failure, and therefore require more controls. Advances in the technology now exist that identify “pockets” of offenders that are more risk to the community (i.e. shooters) or those that are likely to be victims of a shooting.
2. Use standardized need assessment tools to identify problem behaviors such as mental health, substance abuse, low self-control, criminal values, anti-social behaviors, and other criminal drivers. These tools are useful to identify needs of offenders.
3. Assign offenders to programs, services and controls based on their actuarial risk assessment and needs assessments. In other words, high risk offenders should be assigned more

structure and controls than lower risk offenders; drug offenders should be assigned to treatment if they abuse or are addicted to alcohol or drugs. Drug dealers and others should be assigned to programs that deal with their criminal attitudes and values.

4. Use structured sanctions and rewards to address offenders' compliance with the correctional conditions. Structured responses are important to reinforce positive and negative behaviors. The system needs to have a mechanism to deal with the offenders that are not going to follow-through on required conditions. The use of mechanisms like judicially-run or administrative hearings on technical violations that are swift and close to the time frame of the infraction behavior. (Examples of swift and certain mechanisms are Project Hope in Hawaii or "walk in" technical violation hearings.)

At the correctional program level, the following have been identified as key characteristics of effective programs that are designed to change behavior of offenders (see NIDA, 2006 for a summary; Taxman, Perdoni, & Harrison, 2007 for a discussion of the literature).

- Programs should be sufficient duration (length) and include multiple levels of care to assist the offender in the recovery process; a continuing care model provides treatment when the offender is starting to relapse. For lower risk offenders, duration should be 90 days; more serious risk needs longer periods of care such as 12 to 18 months. (New York State's residential treatment programs, including the Drug Treatment Alternative to Prison (DTAP) are 18 months.)
- Treatment should be continuous levels of care involving aftercare or linking offenders to services as they move through the various stages of the correctional system (i.e. from jail to community, prison to community, various positions in the community).
- Therapies focus on cognitive restructuring or cognitive-behavioral models are the most effective for offenders. Other forms of effective therapies for offenders are therapeutic communities.
- Motivational enhancement therapies or strategies are useful to assist the offender in taking ownership for his/her behavior. These strategies can be used by treatment counselors, correctional officers, and probation officers.
- Reinforcers (contingencies) are needed to shape behavior.

Moving Ahead: Policy Based on Science

The science principles provide a platform for moving towards a new generation of supervision that is focused on improved offender outcomes. This prescription provides the framework to achieve public safety goals within current resource constraints.

1. **Systems should have validated risk tools that assist in making decisions about the likelihood an offender will present a public safety risk.** These tools should be used at sentencing to guide the sentencing judge, and to inform the judge of the levels of control that are appropriate given the offender's history. Risk tools are critical in assisting agencies to shift and sort offenders into categories which will determine the appropriate level of service. Lowenkamp and Latessa (2006) have shown how important the use of risk level is in determining appropriate placement in services; in a study of the Ohio halfway system, low

risk offenders in the halfway houses tended to recidivate at higher rates than medium to high risk offenders; medium to high risk offenders did better in halfway houses with a similar population.

- Low risk offenders should be placed in more punishment or reparation-oriented programming. By removing low risk offenders from probation, this can reduce the caseloads of supervision.
- Medium to high risk offenders need assistance to manage their behaviors and to ensure public safety. These risk tools are vital to provide systematic decision making, and will clarify how different offenders should be handled. It will also preserve the most expensive community-based options for offenders that are more likely to benefit (including society).

2. **Low risk offenders should be given swift and certain punishments that have reparative principles.** For the most part, these offenders should not be under any form of supervision for any more than a month. The goal should be to handle these punishments expeditiously, and to have the offenders focus their efforts on reparation to communities. A model to consider is the day fines experiments in the early 1990s or the community service (e.g., weekend service) concept where offenders are involved in reparation activities. In the day fines experiment, offenders paid fines based on the severity of the misdemeanor offense and their income; for indigent offenders, they were required to “work” on a community project for the equal number of days of their fine. This could be part of the strategy of supervision agencies addressing some of the needs of communities or neighborhoods that are highly disadvantaged (e.g., high poverty levels, high degree of instability). Reinvesting in these communities, where many offenders happen to reside, would serve the benefit of increasing stability in the neighborhoods and contribute to healthier communities.

3. **Moderate to high risk offenders should be placed in supervision that is designed to facilitate offender change.** The risk tool should guide the identification of the types of behaviors that contribute to criminal conduct such as violence or power/control issues, substance abuse/dependency, predatory sexual behavior, and detached or dissociated supervision. Standardized needs assessment tools are needed to identify these criminal drivers; correctional agencies should then assign offenders to programs/services appropriate to these criminal drivers. A behavioral contract that includes the conditions for release and short term goals for the offender should guide the period of supervision. The behavioral contract is a negotiated agreement where the conditions are designed to ameliorate criminogenic risk and need factors.

- **Treatment programs/services need to meet the needs of offenders.**
 - Offenders need more than substance abuse treatment programs. In adult populations, one-third of males and two-thirds of females are drug dependent and need substance abuse treatment. In juveniles, the youth are more likely to be abusers and need cognitive restructuring programs.

- Generally correctional agencies need to expand programming on criminal value systems.
 - Educational systems are needed to address cognitive processing and help offenders obtain math and literacy skills to function in society.
 - Vocational and employment programs in community corrections are needed to assist offenders in being prosocial but also in providing opportunities to be productive. Employment is a predictor of positive outcomes.
- **Components of effective behavioral contracts, as compared to typical supervision plans, are:**
 - The process of developing and monitoring the contract should involve:
 - Establishment of agreed upon milestones;
 - Feedback provided to the offender on the progress on the contract;
 - Revisiting situations when the offender struggles with a particular issue;
 - Using incentives and sanctions to shape offender behaviors where feedback is provided;
 - Timely communication with the offender to review progress on the case plan and achievement of supervision goals; and,
 - Development of natural supports to assist the offender in having a support system that offers assistance upon the completing of supervision.
4. **Supervision should not be longer than 18 months for moderate to high risk offenders.** Reducing supervision time frames serves the dual goal of reducing caseloads and using resources effectively. Most offenders that are likely to fail (i.e. rearrest, revoked, reincarcerated, etc) will do so in 18 months. Any longer period of supervision requires too many resources that are not likely to yield public benefits. During the tenure of supervision, the goal should be to transfer the control from formal institutions to natural support systems.
 5. **Pharmacological interventions (e.g., medications for drug use, alcohol use, mental health) should become more common in habilitation efforts for moderate to high risk offenders.** Advancements in medications have made these tools useful in assisting people to learn to control their behavior and to become more productive citizens. Medications should not be perceived as a crutch but as a mechanism to improve the offender's cognitive capabilities and ability to remain drug free. Some medications also serve to address addictions issues, and along with behavioral therapies, have been shown to be effective in changing offender behavior (NIDA, 2006).
 6. **Probation/parole staff should be certified in different skills as they advance through the organization.** The development of staff should be towards client-centered skills such as interviewing and communication techniques, behavioral contracting, and problem-solving. These will improve supervision and focus attention on the offender assuming ownership for their own behavior.

7. **Systems would need to adopt some policy-based contingency management systems that would guide decisions regarding reinforcing positive behaviors and pursuing revocation.** Discretionary decisions by probation/parole officers contribute to problems in the supervision system by allowing some offenders with similar behavior to be treated differently from other offenders. This situation does not bode well for compliance to general conditions of supervision (Taxman & Thanner, 2003/2004). Contingency management systems provide for swift and certain rewards (positive reinforcers) to facilitate prosocial behavior. They change the focus of the criminal justice system from acknowledging failures to recognizing gains. As part of the process, negative behaviors can be similarly handled in a swift and certain manner. Policy-based guidelines should include both incentives to shape positive behavior and sanctions for negative behaviors. Modeled after parole guidelines (see Burke, 2001), contingency management systems can be delivered that provide a formula for focusing attention on improvements. (For a discussion of contingency management, see Taxman, Shepardson, & Byrne, 2004 and Petry, Tedford, Austin, Nich, Carroll, & Rounsaville, 2004). Offenders should not be reincarcerated for failure to comply with violations that are not criminal behaviors, which should reduce reincarceration rates.

Conclusion

While no federal initiative has focused on the largest portion of the correctional system—community supervision—no crime control initiatives can be successful without attention to this arena. Probation and parole are the cornerstone of the system where the majority of offenders are supervised. The system has been built to “feed” the prison system instead of offering realistic and meaningful options to punish offenders and to assist offenders in becoming productive members of their communities. Specialized programs like drug courts should be linked to probation and parole by providing the resources to handle the more serious offenders. The use of standardized risk and need assessment tools allows community correctional agencies to manage the population by focusing on allocating resources to those “in need” (higher risk level) and those that are more likely to benefit from the programs and services. A federal initiative on community supervision would go a long way to advance better practices; with less than a third of community correctional agencies using some of these practices, more attention is needed to improve the infrastructure of community correctional agencies to be effective tools to reduce recidivism. Additionally support is needed to the U.S. Sentencing Commission and the Federal Administrative Office of the Courts (Probation and Pretrial) services to move in a direction where supervision is more meaningful and geared towards enhancing public safety.

References

- Andrews, D. & Bonta, J. (1998). *The Psychology of Criminal Conduct* (2nd ed.). Cincinnati, OH: Anderson.
- Burke, P. (2001). *Responding to Parole and Probation Violations: A Guide to Local Policy Development*. Washington, DC; National Institute of Corrections.
<http://www.nicic.org/Library/016858>
- Lowenkamp, C. T. & Latessa, E. J. (2005). Increasing the effectiveness of correctional programming through the risk principle: Identifying offenders for residential placement. *Criminology and Public Policy*, 4, 2: 291-310.
- Mackenzie, D. L. (2000). "Evidence-Based Corrections: Identifying What Works." *Crime and Delinquency*. 46 (4): 457-461.
- National Institute on Drug Abuse. (2006). *Principles of Drug Abuse Treatment for Criminal Justice Populations*. (NIH Publication No. 06-5316). Rockville, MD: National Institute on Drug Abuse.
- National Research Council (2007). *Criminal Supervision and Desistance from Crime: What Do We Know About Parole and Desistance*. Washington, DC.: National Academy of Sciences.
- Petry, N. M., Tedford, J., Austin, M, Nich, C, Carroll, K M. & Rounsaville, B J. (2004) Prize reinforcement contingency management for treating cocaine users: how low can we go, and with whom? *Addiction* 99 (3), 349-360.
- Sherman, L. W., Gottfredson, D., MacKenzie, D., Eck, J., Reuter, P., and Bushway, S. (1997). *Preventing Crime: What Works, What Doesn't, What's Promising: A Report to the United States Congress*. Washington, D.C.: U.S. Dept. of Justice, National Institute of Justice.
- Taxman, F.S., Perdoni, M., & Harrison, L. D. (2007). Drug treatment services for adult offenders: The state of the state. *Journal of Substance Abuse Treatment*, 32, 239-254.
- Taxman, F.S., Young, D., Wiersema, B., Mitchell, S., & Rhodes, A.G. (2007a). The National Criminal Justice Treatment Practices Survey: Multi-level survey methods and procedures. *Journal of Substance Abuse Treatment*, 32, 225-238.
- Taxman, F. S., Shepardson, E. S., and Byrne, J.M. (2004). Tools of the Trade: A Guide to Incorporating Science into Practice. Washington, D.C.: U.S. Dept. of Justice, National Institute of Corrections. <http://www.nicic.org/Library/020095>

- Taxman, F.S., & Thanner, M. (2003/2004). "Probation from a Therapeutic Perspective: Results from the Field," *Contemporary Issues in Law*, 7(1):39-63.
- Taxman, F. (2002). "Supervision – Exploring the Dimensions of Effectiveness," *Federal Probation* 66(2): 14-27.
- Thomas, J.C. & Torrone, E. (2006). Incarceration as Forced Migration: Effects on Selected Community Health Outcomes. *American Journal of Public Health*, 96:1762-1765.